

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

-----  
ESTATE OF ROGER D. :  
OWENSBY JR., et al., :  
 :  
Plaintiffs, : Case No. 01-CV-769  
vs. : (Judge S. A. Spiegel)  
 :  
CITY OF CINCINNATI, : VOLUME II  
et al., :  
 :  
Defendants. :  
-----

Continued videotaped deposition of DAVID  
WILLIAM HUNTER JR., a witness herein, called by the  
plaintiffs for cross-examination, pursuant to the  
Federal Rules of Civil Procedure, taken before me,  
Wendy Davies Welsh, a Registered Diplomate Reporter  
and Notary Public in and for the State of Ohio, at  
the offices of Helmer, Martins & Morgan Co. LPA,  
1900 Fourth & Walnut Centre, 105 East Fourth Street,  
Cincinnati, Ohio, on Thursday, December 4, 2003, at  
10:11 a.m.

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1 APPEARANCES:

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1 APPEARANCES (Continued):

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4 Darren Sellers:

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17 Also present:

18 Richard W. Grubb, Videographer

19 Lisa Damstrom, Law Clerk

20 Helmer, Martins & Morgan Co., L.P.A.

21 Roger Owensby Senior

22 Brenda Owensby

23 Shawn Owensby

24

STIPULATIONS

It is stipulated by and among counsel for the  
respective parties that the deposition of DAVID  
WILLIAM HUNTER JR., a witness herein, called by the  
plaintiffs for cross-examination, pursuant to the

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1 Federal Rules of Civil Procedure, may be taken at  
2 this time by the notary; that said deposition may be  
3 reduced to writing in stenotype by the notary, whose  
4 notes may then be transcribed out of the presence of  
5 the witness; and that proof of the official  
6 character and qualifications of the notary is  
7 expressly waived.

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1 DAVID WILLIAM HUNTER JR.

2 being by me previously duly cautioned and sworn,  
3 deposes and says as follows:

4 VIDEOGRAPHER: Time is 10:11 a.m. The  
5 date is December the 4th. The year is 2003.

6 We're on the record, sir.

7 CONTINUED CROSS-EXAMINATION

8 BY MR. MARTINS:

9 Q. Officer Hunter, we're picking up where we  
10 left off after November 6, your first couple hours  
11 of your deposition. Remind you that you are still  
12 under oath. Okay?

13 A. Yes, sir.

14 Q. All right. Have you talked with anyone  
15 about your deposition on November 6th between  
16 November 6th and today?

17 A. No, besides my attorney.

18 Q. Okay. Have you discussed the facts of the  
19 Owensby case with anyone between November 6th and  
20 today?

21 A. No.

22 Q. I want to direct your attention now to  
23 November 7, 2000. I understand in the -- sometime  
24 on that day you received an MTD message request for

Estate of Roger D. Owensby, Jr.  
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DAVID WILLIAM HUNTER, JR.  
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1 a misdemeanor citation traffic ticket book. Is that  
2 right?  
3 A. Yes.  
4 Q. Where were you when you received that?  
5 A. Near University -- near the University of  
6 Cincinnati, around the Corry, Vine Street area.  
7 Q. And did you type in some acknowledgment  
8 that you were going to respond with a --  
9 Is it NDT?  
10 A. NTA.  
11 Q. NTA. Okay. -- NTA book?  
12 A. Yes.  
13 Q. And that was to Officer Hasse and Sellers?  
14 A. I don't recall exactly who I sent it to,  
15 but I -- I responded to whoever sent me the message.  
16 Q. All right. Am I correct in understanding  
17 that you then drove your police cruiser over to the  
18 Sam's Carry Out on Seymour Avenue?  
19 A. Yes.  
20 Q. Do you know what time you got there?  
21 A. No, not exactly.  
22 Q. Was the sun still up?  
23 A. I believe it was.  
24 Q. When you arrived, who was there?

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1 A. Officer Jorg, Officer Caton, Officer  
2 Sellers and Officer Hasse.  
3 Q. And Caton and Jorg were in one Cincinnati  
4 police cruiser; Sellers and Hasse were in another?  
5 A. I know Sellers and Hasse were partners  
6 that day. I don't recall exactly whether or not  
7 Jorg and Caton were partners. They could have been.  
8 Q. How many police cruisers were there?  
9 A. I don't remember.  
10 Q. We know that at least two were there:  
11 yours, and Sellers and Hasse?  
12 A. Yes.  
13 Q. Do you know how Jorg and Caton got there?  
14 A. I'm sure they drove there, sir. I -- I  
15 just don't remember if they were partners that day.  
16 Q. Okay.  
17 A. I just don't want to say, you know, either  
18 way. I'm -- I can't be for sure. I can't be  
19 certain.  
20 Q. They were in uniform: Jorg and Caton?  
21 A. Yes.  
22 Q. And Hasse and Sellers were in uniform?  
23 A. Yes.  
24 Q. And you were in uniform?

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1 A. Yes.  
2 Q. As part of your duty uniform on that day,  
3 are -- do you wear a vest under the shirt, like a  
4 bullet--  
5 A. Vest? Vest?  
6 Q. --proof vest?  
7 A. Yes.  
8 Q. Okay. Do you know how much that weighs?  
9 A. No.  
10 Q. Do you have an estimate?  
11 A. I estimate -- estimate it to be maybe two  
12 or three pounds.  
13 Q. Okay. And you have a belt that has  
14 various implements on it; is that right?  
15 A. Yes.  
16 Q. Do you know how much that belt weighs with  
17 all of its accoutrements?  
18 A. 46 pounds.  
19 Q. 46 pounds?  
20 A. Yeah, about.  
21 Q. Oh, four to six pounds?  
22 A. 46.  
23 Q. Okay.  
24 A. Wait a minute. No, no, no. No way.

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1 We -- I don't know. I don't know. I -- I don't  
2 know.  
3 Q. What's on the belt that you wear?  
4 A. Gun, nightstick, baton -- PR-24,  
5 flashlight. See, all the -- every belt going to  
6 vary. I -- I carry a two-pouch handcuff case, so I  
7 carry two pair -- pairs of handcuffs. Some people  
8 only carry one. Some people carry a long PR-24,  
9 just -- just one piece. Some people carry  
10 collapsibles. So I would actually have to weigh  
11 that belt to give you a precise weight, but it's --  
12 it's pretty heavy, I mean.  
13 Q. And I'm just trying to get your estimate  
14 of the belt that you were wearing on that day.  
15 A. On that day? I -- I'll estimate it to be  
16 about 30 pounds.  
17 Q. 30 pounds?  
18 A. Uh-huh.  
19 Q. Okay.  
20 A. It's pretty heavy.  
21 Q. All right. Do you know if Officer Jorg  
22 was wearing a vest, bulletproof vest?  
23 A. I don't know for sure, but per procedure  
24 he's supposed to have been wearing one.

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1 Q. Okay. And so per procedure, I guess Caton  
2 should have been wearing one also?

3 A. Yes.

4 Q. As would Sellers and Hasse?

5 A. Yes.

6 Q. And Officer Jorg had on a belt with at  
7 least a revolver on it; is that right?

8 A. We carry semiautomatics, but yes, a  
9 pistol.

10 Q. Okay. A pistol?

11 A. Yes.

12 Q. Do you know if he had a nightstick?

13 A. Yes.

14 Q. Okay. He did. Do you know if he had  
15 Mace?

16 A. He should. Well, when I say yes, I mean  
17 this is what he should have had on his belt.

18 Q. Okay. So there are certain --

19 A. Whenever --

20 Q. -- things that are --

21 A. Right. Whenever we get out of the car, we  
22 should have our PR-24 with us. That's why some  
23 people carry collapsibles. Because you can wear it  
24 while you're driving. Some people like the old

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1 style, but you have to remember to grab it when you  
2 get out the car.

3 Q. All right. So there are certain things  
4 that are required to be on the belt, and the officer  
5 in his discretion may add other things; is that  
6 right?

7 A. Yeah, as far as a spare set of handcuffs,  
8 something of that nature --

9 Q. Right.

10 A. -- yes, you could add onto it.

11 Q. All right. And I'm trying to understand  
12 what is required to be on the belt.

13 A. Handcuff, flashlight, your PR-24, your  
14 gun. Did I say flashlight? I don't remember.

15 Q. Yes.

16 A. Okay. And belt keeps, but they don't  
17 weigh that much. That's just to keep your belt in  
18 place. And a pouch for gloves.

19 Q. And if I'm understanding you correctly,  
20 the belt that you normally wear, the only additional  
21 thing you have to what is supposed to be on the belt  
22 is a second pouch for handcuffs?

23 A. No.

24 Q. What else?

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1 A. I -- I have -- it's a single pouch, but it  
2 car-- it holds two pair of handcuffs.

3 Q. Oh, okay. So you have an extra pair of  
4 handcuffs?

5 A. Right. And I also carry a Gerber tool on  
6 my belt.

7 Q. What's a Gerber tool?

8 A. It's like a Leatherman. It's pliers,  
9 screwdriver.

10 Q. Okay.

11 A. It has a knife. It folds.

12 Q. All right. Anything else that you had  
13 that is not usually found on a police officer's  
14 belt?

15 A. No.

16 Q. As far as the extra handcuff and the  
17 Gerber tool, what would you estimate the weight of  
18 that, those two things?

19 A. Those two things together?

20 Q. Just those two things.

21 A. Maybe a pound, pound and a half.

22 Q. All right. So would it be fair to say  
23 that if -- if an officer was wearing just a regular  
24 belt with the items that are supposed to be on,

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1 nothing additionally, that in your estimate --  
2 estimation, the weight would be somewhere around,  
3 say, 28 pounds?

4 A. I'll say I estimate it to be about that,  
5 yes.

6 Q. All right. Now, you arrive, and I presume  
7 that you give somebody this NTA book. Is that  
8 right?

9 A. No.

10 Q. Okay. What happened?

11 A. I arrived and I saw an NTA book laying on  
12 the hood of somebody's car. And then I said, "Why  
13 you all calling me up here to bring an NTA book and  
14 you already have one? You all could have -- you all  
15 could have disregarded me."

16 Q. Who'd you say that to?

17 A. I don't remember. It was -- Caton and  
18 Jorg was standing out there. I don't know if I was  
19 talking to Hess (sic) -- I don't know if I was  
20 talking to Hasse or if I was talking to Sellers.  
21 I -- you know, I just made a -- just a general, you  
22 know, statement.

23 Q. Where -- where was Caton and Jorg at that  
24 time?

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1 MS. GEILER: Thank you.  
2 THE WITNESS: You're welcome.  
3 BY MR. MARTINS:  
4 Q. What happened once you saw Mr. Owensby  
5 walking in the vicinity of Integrity Hall?  
6 A. Noth-- I brought it to Jorg and Caton's  
7 attention.  
8 Q. What did you say to them?  
9 A. I said, "That guy looked like the guy that  
10 ran from me. Remember when we" -- well, then I was  
11 talking to Officer Jorg. I said, "Remember when we  
12 was working old clothes that day?"  
13 Q. And what, if anything, did Jorg say in  
14 response?  
15 A. He asked me if I was sure if that was him.  
16 I said, "Well, from this distance and in this light,  
17 no, I can't be sure from here."  
18 Q. Were you able to tell at -- at that point  
19 in time whether or not Mr. Owensby had facial hair?  
20 A. From that distance?  
21 Q. From that distance.  
22 A. No.  
23 Q. What was it about the person that you saw  
24 by Integrity Hall that made you think it looked like

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1 the person that had run from you on September 27th?  
2 A. His height, size. And from where I was  
3 standing, he was walking at an angle, and I could  
4 get like a -- I could see like his face from a  
5 distance as far as like, you know, he looked similar  
6 to the person that ran from me at that time.  
7 Q. What was his height?  
8 A. I don't know his height.  
9 Q. Would it be fair to say he was average  
10 height?  
11 A. Yeah. Medium build.  
12 Q. Average height, medium build?  
13 A. (Nodding head.)  
14 Q. Okay.  
15 A. Uh-huh.  
16 Q. And if I understand you correctly, from  
17 his -- from that distance you could not tell if he  
18 had facial hair. Were there any other  
19 distinguishing characteristics about him that caused  
20 you to think that he was the person that ran from  
21 you on September 27?  
22 A. Like I say, he just -- he had the features  
23 of the person that I remember that had ran from  
24 me --

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1 Q. And what I'm --  
2 A. -- previously.  
3 Q. -- trying to understand is, what were  
4 those features?  
5 A. His -- his build, his height, his -- I  
6 mean, just -- his stature. And like I said, it  
7 wasn't light -- I mean, the sun wasn't up, but it  
8 was -- it was like not completely dark either.  
9 Q. Can you identify any other distinguishing  
10 feature of the person that you saw by Integrity Hall  
11 that caused you to think that that was the same  
12 person that ran from you on September 27th?  
13 A. No. Not -- I mean, no.  
14 Q. The -- when you said -- pointed him out to  
15 Officer Jorg, do you know whether or not Officer  
16 Jorg said something to you to the effect, words to  
17 the effect that that takes balls to walk past  
18 cruisers and uniformed officers?  
19 A. That sound familiar to me. That -- that  
20 does sound familiar to me, but I can't recall.  
21 Q. I'm -- I'm not sure I'm quoting it  
22 direct -- correctly, but some -- words to that  
23 effect.  
24 A. I'm just saying I remember hearing

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1 something like that.  
2 Q. Okay. Did Officer Caton say anything to  
3 you?  
4 A. I don't remember. I mean, I --  
5 Q. When you were talking to Officer Jorg,  
6 pointing out this person over by Integrity Hall, was  
7 Officer Caton there also?  
8 A. Yes.  
9 Q. Did Officer Jorg explain or -- or did you  
10 explain to Officer Caton who this person was that --  
11 that you were referring to?  
12 A. Well, he was standing there while me and  
13 Jorg was talking, so he could just gather it from  
14 that what we were talking about, because he knew  
15 about the incident.  
16 Q. And that's what I'm trying to understand,  
17 is how did he know about the incident?  
18 A. From Jorg, I'm sure.  
19 Q. Did -- did -- did you hear Jorg talk to  
20 him about the incident?  
21 A. No, but me and Jorg was talking back and  
22 forth about the incident.  
23 Q. And Caton was there?  
24 A. And Caton was there.

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1 Q. And what you were telling Officer Jorg,  
2 was that reminding him about the incident on  
3 September 27th when the guy ran away from you, you  
4 had grabbed the hood of the sweat shirt?  
5 A. Yes.  
6 Q. What happened next?  
7 A. I asked Officers Jorg and Caton to walk  
8 over to the Sunoco lot with me, because I wanted to  
9 get a closer look to see if that was -- if I can  
10 identify him, positively identify this individual.  
11 So we walked over to the Sunoco lot -- me,  
12 Officer Caton and Officer Jorg -- and I looked at --  
13 Was you about to say something?  
14 Q. I was going to stop you --  
15 A. Oh.  
16 Q. -- just to ask you some -- some questions  
17 there. Did you -- before you, Officer Jorg and  
18 Officer Caton started to head over to the Sunoco  
19 lot, did you mention to Jorg and Caton that the  
20 person you were looking for was known as LA?  
21 A. Yes.  
22 Q. And did either Jorg or Caton make any  
23 attempt to go to see if the person that was in the  
24 back seat of Hasse's cruiser knew who this LA person

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1 was?  
2 A. I don't know if they had done that or not,  
3 but from the time I asked them to walk over to the  
4 lot with me, we just walked over. At that time they  
5 did not, but I don't know if they had previously  
6 asked about that or -- you know.  
7 Because when I was up there on the scene,  
8 I might have -- I remember saying something to  
9 either Hasse or to Sellers. Because when they said  
10 they had -- when I said we was just standing around  
11 talking, I asked one of those officers if the person  
12 they had in the back of the car, if he knew LA or if  
13 he bought his, whatever he -- this marijuana that he  
14 had, from an individual known as LA, nickname LA.  
15 Q. And did they -- whoever you told this to,  
16 did they go and ask the person?  
17 A. I believe they did.  
18 Q. And did they come back with an answer?  
19 A. I don't remember if they -- at that time  
20 if they came back and said anything or not.  
21 Q. And this would have been before you saw  
22 Mr. Owensby walking --  
23 A. Yes, that would be before I saw him  
24 walking.

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1 Q. Okay. The person that they had in the  
2 back seat of the car had been arrested for  
3 possession of marijuana, right?  
4 A. Yes.  
5 Q. And it was less than 100 grams, so it was  
6 a minor misdemeanor?  
7 A. Yes.  
8 Q. Did you see the bag of marijuana?  
9 A. No, I don't remember seeing it.  
10 Q. Do you know whether or not there was one  
11 bag, two bags that they had --  
12 A. I don't --  
13 Q. -- charged the person with?  
14 A. I don't know.  
15 Q. As you and Jorg and Caton walked over to  
16 the Sunoco station, did anyone mention a concern  
17 that this person LA was known to be armed, carry a  
18 firearm?  
19 A. No.  
20 Q. As you walked to the station, did -- at  
21 that point in time, had anyone told you that LA is  
22 known to be carrying a firearm?  
23 A. No.  
24 Q. Let's continue, then. You get -- you get

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1 to the Sunoco station. What happens at that point?  
2 A. I walk up and I looked in the window,  
3 which the window I looked in, it's directly behind  
4 the cash register and the clerk would be standing  
5 right in front, you know, right there with his back  
6 to that window. And then people making purchases  
7 would be facing that -- that direction.  
8 Q. Let me give you what I'm going to mark as  
9 Exhibit 86, and it is a drawing of the Sunoco  
10 station.  
11 (Deposition Exhibit 86  
was marked for identi-  
12 fication.)  
13 Q. If you would just indicate with a circle  
14 and the number 1 where you were located, the -- the  
15 window that you were looking through.  
16 A. (Witness complies.)  
17 Q. Thank you. Were -- were Jorg and Caton  
18 standing at that window with you?  
19 A. They were standing just behind me.  
20 Q. All right. What happens at that point?  
21 A. I look in the window. The -- the person,  
22 Mr. Owensby, he steps to the counter to pay for his  
23 drink. And I step back and I tell Caton and Jorg,  
24 That's him.

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1 Q. At that point did you feel that you had  
2 made a positive identification?  
3 A. Yes.  
4 Q. Did you think that at that point you had  
5 probable cause to arrest him?  
6 A. Yes.  
7 Q. And what would the charge be?  
8 A. Obstructing and jaywalking.  
9 Q. The obstructing refers to what?  
10 A. Our investigation, our original  
11 investigation where he warned other individuals that  
12 we are trying to apprehend that we were coming.  
13 Q. And that, you're referring there back to  
14 the September 27th incident?  
15 A. Yes.  
16 Q. At that incident, and we covered this the  
17 last time that we met, as I understand it, there  
18 were four individuals that you and Officer Jorg were  
19 observing. As you approached Sam's, two individuals  
20 crossed the street and headed toward Huntington  
21 Meadows, which you followed, and Officer Jorg  
22 arrested the two individuals that remained at the  
23 Sam's telephone booth area; is that right?  
24 A. That's the -- that's what I remember.

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1 That's --  
2 Q. Okay. And as a result of that, two  
3 individuals -- the two individuals that Officer Jorg  
4 arrested had no drugs on them, no large sums of  
5 money, correct?  
6 A. I don't know about the money, but as far  
7 as drugs, they weren't charged. So I assume that  
8 they didn't have any on them.  
9 Q. And in fact, they were charged with  
10 criminal trespass, right?  
11 A. Yes.  
12 Q. And I think one person was charged with an  
13 open container of Budweiser; is that right?  
14 A. I don't remember that.  
15 Q. Let me show you -- this has previously  
16 been marked as Exhibit 6. Exhibit 6 is comprised of  
17 two tickets or arrests, investigation -- I'm sorry,  
18 two arrest and investigation reports, the first one  
19 for a Jaysen Hill, arrested on September 27th. The  
20 time was about 5:10 and -- or 5:00, and the  
21 arresting officer was Officer Jorg. And you see  
22 that for Mr. Hill he's charged with trespass and an  
23 open -- open container. See that?  
24 A. Yes.

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1 Q. Okay. And then the second person --  
2 Mr. Nixon --  
3 MR. HARDIN: I'm just going to object on  
4 asked and answered already.  
5 Go ahead.  
6 Q. The second person, Mr. Nixon, is charged  
7 with criminal trespass?  
8 A. Yes.  
9 Q. All right. So as of November 7th you had  
10 no -- no evidence that there was any drug activity,  
11 any sale of drugs going on on the afternoon or  
12 evening of September 27th.  
13 MR. HARDIN: Objection.  
14 Q. Right?  
15 MR. HARDIN: The form of the question.  
16 A. On September 27th?  
17 Q. No, no. On the day we're talking about,  
18 November 7th --  
19 A. Okay.  
20 Q. -- you said that you were going to arrest  
21 Mr. Owensby for obstructing. And the obstructing  
22 was --  
23 A. Was the previous.  
24 Q. -- was in relation --

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1 A. Right.  
2 Q. -- to September 27?  
3 A. That's correct.  
4 Q. And what I'm saying is on November 7th  
5 now --  
6 A. Okay.  
7 Q. -- you know that you had no evidence of  
8 any drug activity on September 27, because the two  
9 people you arrested you found no drugs on, no large  
10 sums of money, correct?  
11 MR. HARDIN: Objection.  
12 A. Yeah. On that day our investigation was  
13 incomplete because of his obstructing, because of  
14 the two people that got away. Those two people, you  
15 know, as far as evidence, the -- if the question is  
16 did we have physical evidence, no, because they got  
17 away.  
18 Q. Did you have any evidence that -- that the  
19 two people that ran away were dealing in drugs?  
20 A. Nothing but the observations that we made  
21 before we moved in.  
22 Q. And the observations that you had made  
23 were based on four people acting in concert,  
24 correct?

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1 length of Officer Jorg's arm was the middle of Mr.  
2 Owensby's forehead?

3 A. Probably right -- probably right about,  
4 yeah, I guess, the elbow.

5 Q. In the -- in the elbow?

6 A. In the elbow part.

7 Q. So Officer Jorg leans back, and in leaning  
8 back, then he's pulling Mr. Owensby's head back  
9 also.

10 A. Yes.

11 Q. Correct?

12 A. Uh-huh.

13 Q. Did Mr. Owensby say anything in response,  
14 when Officer Jorg is leaning back and pulling his  
15 head back?

16 A. No.

17 Q. Did Officer -- did Mr. Owensby make any  
18 sound? Regardless of whether he said something, was  
19 there a groan or a -- an exhale or anything like  
20 that?

21 A. When I sprayed him with the Mace, he  
22 groaned.

23 Q. I'm talking -- okay.

24 A. Oh. I'm sorry.

1 A. I'm sorry. Yes.

2 Q. Okay. So Officer Jorg pulls his head  
3 back. You have your Mace. What do you do?

4 A. I sprayed him.

5 Q. How far were you from Mr. Owensby when you  
6 administered the Mace?

7 A. I was point blank, right there in his  
8 face. Right --

9 Q. Okay.

10 A. I mean, right there.

11 Q. The distance of -- of the canister from  
12 his eyes?

13 A. Six inches maybe.

14 Q. And did you spray once, more than once?

15 A. Hmm. Hmm. I think twice.

16 Q. What area of his face did you spray?

17 A. The eyes and the nose.

18 Q. At that point did you -- were you looking  
19 when you were spraying it?

20 A. Yes.

21 Q. Did you notice whether or not Mr. Owensby  
22 was bleeding?

23 A. Hmm. I think he was. I think he was.

24 Q. Where was he bleeding?

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1 Q. I'm talking before.

2 A. Before that? No.

3 Q. When -- when -- when Jorg leans back and  
4 pulls his head back, did -- did Mr. Owensby make any  
5 sound?

6 A. No, not that I remember. No. I don't  
7 remember that.

8 Q. Now, while this is going on, officers are  
9 still yelling at him to give them his arms and --

10 A. Right.

11 Q. -- and things like that, right?

12 A. And at that point Caton started punching  
13 him.

14 Q. Okay. But --

15 A. Or striking him. I --

16 Q. Right.

17 A. I can't say punch. He -- he was striking  
18 him. How, I don't know, but he was swinging.

19 Q. Okay. But my question is when -- when  
20 Jorg is pulling Mr. Owensby's head back with his  
21 arm, other officers are -- are yelling at Mr.  
22 Owensby; is that right?

23 A. Uh-huh.

24 Q. You have to say yes or no.

1 A. I think it was like wet like around the  
2 nose and on the forehead. I -- I -- it was  
3 something wet on his forehead and the no-- around  
4 the nose area.

5 Q. How could you see the forehead if Officer  
6 Jorg's arm was around his forehead?

7 A. The part that I could see. When he had  
8 him like this (demonstrating), when I sprayed him  
9 and he moved back his arm, you know, just kind of --  
10 it on-- it didn't stay like right there the whole  
11 time.

12 Like when he moved just like, you know,  
13 just -- I didn't see the whole forehead, but like  
14 you can just see like just a little bit of this or a  
15 little of this right here like above the brow.

16 Q. All right.

17 A. And I said I didn't see the whole -- you  
18 know, to see if he had a laceration or anything like  
19 that.

20 Q. Once you sprayed Mr. Owensby, was there  
21 any -- did Mr. Owensby make any sounds in response?

22 A. I don't remember him making no sound.

23 Only thing I remember is he made like a grimace  
24 like, you know, like a -- like -- that's the only

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1 reaction to the -- to the Mace that I remember him  
2 doing.  
3 Q. You noticed no coughing?  
4 A. No.  
5 Q. No groan or -- or any -- any sound from  
6 him?  
7 A. Not that I remember. Like I said, the  
8 only thing I remember him doing is just making a  
9 face. I don't remember any -- any noise.  
10 Q. Once you finished administering the Mace  
11 to Mr. Owensby, what happened next?  
12 A. I went back down.  
13 Q. To his arm?  
14 A. To his arm.  
15 Q. And were you then able to get his arm out?  
16 A. Eventually, yes.  
17 Q. How did you get it out?  
18 A. Doing the same thing I was doing before.  
19 Q. Which was?  
20 A. Just pulling and tugging.  
21 Q. At that point do you know whether or not  
22 Officer Caton was able to get Mr. Owensby's left arm  
23 out from under him?  
24 A. Yes. At some point, yeah, he did, because

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1 we eventually got him handcuffed.  
2 Q. How much time elapsed from after you had  
3 sprayed Mr. Owensby with the Mace to the time that  
4 you got his right arm out?  
5 A. A matter of maybe -- maybe a minute or  
6 less.  
7 Q. How much time was this entire procedure  
8 from the time that Mr. Owensby ran between you and  
9 the other officers to the time the handcuffs were  
10 put on?  
11 A. I did know the answer to that, because I  
12 saw it, but right now I don't remember even reading  
13 it. I honestly, you know, saw from the incident the  
14 exact time. But when it happened, it seemed like  
15 it -- maybe three and a half minutes, four minutes,  
16 something like that.  
17 Q. The -- you get his right arm out. Officer  
18 Caton, I guess, gets the left arm out?  
19 A. Yes.  
20 Q. What happens next?  
21 A. He was cuffed.  
22 Q. Who cuffed him?  
23 A. I don't remember.  
24 Q. Did Officer Caton ever leave -- well,

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1 while this is all going on, did Officer Caton ever  
2 change his position?  
3 A. Okay. When you say that, you mean as far  
4 as in the act of getting him cuffed?  
5 Q. Before getting him cuffed.  
6 A. Okay.  
7 Q. While -- while you are -- were on the  
8 right side of Mr. Owensby --  
9 A. Okay.  
10 Q. -- then you went up to the head to  
11 administer the Mace, in that time period was Officer  
12 Caton still on the left side of Mr. Owensby?  
13 A. He was on the left side of Mr. Owensby,  
14 but I think at some point he went down to his legs  
15 and then came back up.  
16 Q. All right. Would you draw --  
17 A. But I don't -- I don't -- I can't say that  
18 for sure, because like I said, when I was moving up  
19 here, from here to here, I wasn't really paying  
20 attention to what he was doing.  
21 Q. Okay. What leads you to believe at some  
22 point he went down to the legs and then came back  
23 up?  
24 A. Because when -- hold on. Let me -- let me

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1 try to think about this for a second, because it's  
2 been a little while.  
3 I think it was. I think, now. I think  
4 it was Hodge who asked for my PR-24 to try to do the  
5 pain compliance. But he wasn't in position, he  
6 wasn't in good position to do it. And if I'm not  
7 mistaken, I think Caton had moved down and he ended  
8 up with my PR-24, trying to get the pain compliance  
9 with the legs, using my PR-24.  
10 Q. When you got Mr. Owensby's right arm out  
11 and put around to his back, were -- where was  
12 Officer Caton?  
13 A. He was back up on the left side.  
14 Q. On the left side?  
15 A. Yes.  
16 Q. Officer -- I'm sorry. Mr. Owensby is then  
17 handcuffed?  
18 A. Yes.  
19 Q. What happens then?  
20 A. Officer Caton straddles him, with both  
21 knees on either side of Mr. Owensby, and he started  
22 punching him in the lower back.  
23 Q. Was it above or below Mr. Owensby's  
24 handcuffed arms?

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1 A. Above.  
2 Q. Hands?  
3 A. Above.  
4 Q. Above?  
5 A. Yes.  
6 Q. Was -- when Officer Caton was straddling  
7 him, was Mr. Owensby's handcuffed wrists in front of  
8 Officer Caton? In other words, was he sitting on  
9 the handcuffs, or were the handcuffs in front of his  
10 crotch?  
11 A. I don't remember. I don't know if he was  
12 sitting on them or not.  
13 Q. Where in the back was Officer Caton  
14 striking Mr. Owensby?  
15 A. I just said the lower -- to me it looked  
16 like the lower back.  
17 Q. All right. Would you draw a circle of the  
18 area and put an S.  
19 A. (Witness complies.)  
20 Q. How many times did Officer Caton strike  
21 Mr. Owensby after he was handcuffed?  
22 A. About at least four to five times.  
23 Q. Were these punches, fist closed?  
24 A. Yes. I believe they were.

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1 Q. Where were you when this was happening?  
2 A. I was standing up off to the right side,  
3 maybe about here (indicating).  
4 Q. Okay. Would you indicate that with a  
5 circle and an H in the middle.  
6 A. (Witness complies.)  
7 Q. Did Mr. Owensby react in any way to these  
8 four or five punches in the small of his back?  
9 A. No. I couldn't see his face, but as far  
10 as --  
11 Q. Did you -- did you hear anything?  
12 A. No.  
13 Q. Other than his body moving to the -- to  
14 the punches, did he move his body in any way in  
15 response to the punches?  
16 A. Not that I remember, because when -- when  
17 all this was taking place at this point, it's like  
18 in my mind it's supposed to be over. Okay? So  
19 to -- to see Caton punching him after he was  
20 handcuffed, that was like a shock. So I -- I mean,  
21 it was like --  
22 I was like, "What the hell is he doing?"  
23 I mean, I said that before, and that's -- because I  
24 said it out loud. I said, "What the hell is he

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1 doing?" And then, you know, he stopped.  
2 Q. Was Caton saying anything while he was  
3 punching Mr. Owensby in the back after he was  
4 handcuffed?  
5 A. Yes.  
6 Q. What was he saying?  
7 A. "Stop resisting."  
8 Q. Was he resisting?  
9 A. No.  
10 Q. Because he was handcuffed?  
11 A. Yes.  
12 Q. And he wasn't moving or -- or saying  
13 anything?  
14 A. No.  
15 Q. Where was Officer Jorg while Officer Caton  
16 was punching Mr. Owensby in the back after he was  
17 handcuffed?  
18 A. Standing up.  
19 Q. Where?  
20 A. Up here by the head.  
21 Q. Okay.  
22 A. Or just -- like I said, I was looking at  
23 this guy (indicating) and -- but Jorg was here and  
24 he got up. I know he got up. He stood up when I

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1 stood up.  
2 Q. All right.  
3 A. Or somewhere about.  
4 Q. Do you know -- do you know if Officer Jorg  
5 was standing either to the right or to the left of  
6 Mr. Owensby?  
7 A. I don't -- I can't recall where, exactly  
8 where he was standing, because I was watching -- I  
9 was looking at this person (indicating).  
10 Q. But Officer Jorg was standing somewhere  
11 around the head area?  
12 A. He was standing somewhere in close  
13 proximity to where he just got up from. So he was  
14 in -- in this area somewhere (indicating).  
15 Q. Did anyone else say anything to Officer  
16 Caton in response to seeing him punching Mr. Owensby  
17 in the small of the back after he was handcuffed?  
18 MR. HARDIN: Objection to the form of the  
19 question.  
20 A. I don't recall anybody saying anything  
21 directly to Caton about it.  
22 Q. What happened next?  
23 A. Caton and Jorg, they got Mr. Owensby up.  
24 Well, they -- as they were getting him up, it was a

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1 Golf Manor officer near, his car was near. Caton  
2 yelled to the Golf Manor officer, "Can we put him in  
3 your car?" And the Golf Manor officer said yes.

4 Caton and Jorg took Mr. Owensby over to  
5 the car, and I was still standing around picking up,  
6 you know, I picked up my Mace, and then checking my  
7 belt to make sure I had everything.

8 And they -- as they took him over to the  
9 car --

10 Q. Let --

11 A. -- I walked over to the -- okay. Go  
12 ahead.

13 Q. Now let -- let me stop you. How did they  
14 pick up Mr. Owensby?

15 A. By the arms.

16 Q. Okay. So he's handcuffed and they -- they  
17 pick him up. Who is on the right side, who's on the  
18 left side, if you know?

19 A. I don't know for sure, but I think Caton,  
20 for the most part, he was on the left side. So I'm  
21 going to assume that he stayed on the left side when  
22 he -- when they picked him up and then Officer Jorg  
23 was on the right. They picked him up and then they  
24 took him to the car.

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1 Q. Did you see -- could you tell whether or  
2 not Mr. Owensby was able to walk to the car?

3 A. Yes, I can tell.

4 Q. And what -- what did you see?

5 A. No.

6 Q. He could not walk?

7 A. No. He -- we -- he --

8 Q. How --

9 A. I don't -- if he could or couldn't, he was  
10 not walking. He did not walk to the car.

11 Q. He was being carried?

12 A. Yes.

13 Q. His -- his feet were dangling?

14 A. Dragging.

15 Q. Okay. And the -- Officer Jorg and Caton  
16 had Mr. Owensby by the arms?

17 A. Yes.

18 Q. Did anyone else assist in taking Mr.  
19 Owensby to the Golf Manor cruiser?

20 A. There might have been another person over  
21 there, but like I said, I didn't actually watch them  
22 place him all the way in the car. So I don't know  
23 if anybody might have got any hands on to help pull  
24 him in or get him situated in the back of that car.

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1 Q. All right. What happens next?

2 A. I was still standing -- I -- I was --

3 after they get him over to the car, I walked toward  
4 the car. And there was no need for me to be over  
5 there, really, so I walked back over, same thing,  
6 into the area, just looking down on the ground or  
7 whatever, around the area where this just happened.

8 And I looked up and I looked across over  
9 toward the Golf Manor police car and I saw the back  
10 door open and I saw Officer Caton swinging.

11 Q. Now, what side of the Golf Manor car was  
12 Officer Caton on?

13 A. Oh. The -- oh, God. I -- whichever side  
14 Mr. Owensby's head was at, because that's the  
15 side -- that -- the back door. He was at -- he was  
16 standing at the back door where --

17 Because they had Mr. Owensby laying across  
18 the back seat. And the side where his head was  
19 nearest to the door, that door was open and that's  
20 the door -- that's where Officer Caton was standing.

21 Q. Was the other door open?

22 A. No.

23 Q. Do you know if the car was in -- from  
24 where you were and where Officer Caton was, was the

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1 car between you two? In other words, were you  
2 looking toward Officer Caton's face or were you  
3 looking toward his back?

4 A. Hmm. Hmm. Right this minute I can't say  
5 for -- for sure, but I do know that from where I was  
6 standing, what I saw was the door was open and I can  
7 see Caton making swinging motions. But the door was  
8 between my vision and Mr. Owensby, so I could not  
9 see him making contact, but I can see him swinging.

10 Q. When you say he was swinging, would you  
11 either demonstrate or describe for me what you saw.

12 A. Him -- I'll demonstrate.

13 Q. Okay.

14 A. He was leaning in the doorway. He was  
15 between the door and the inside of the car. He was  
16 leaning in, and I could see him drawing back and  
17 coming down, drawing back, coming down, throwing  
18 either punches or open hand, I can't say, but he was  
19 throwing blows. He was delivering blows. And  
20 Mr. -- and the only thing he -- he could eith-- he  
21 could have been punching Mr. Owensby or he could  
22 have been punching the back seat.

23 Q. And do you know how many blows Officer  
24 Caton administered?

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1 A. About -- I'm just ballparking it. I mean,  
2 maybe four.  
3 Q. Did you hear Officer Caton say anything in  
4 respon-- or while he was administering these blows  
5 to Mr. Owensby?  
6 A. No, I couldn't hear him say anything then.  
7 Q. Did you do anything in response to seeing  
8 this?  
9 A. When I saw --  
10 Like I said, it -- it was like maybe, like  
11 I said, three to four, roughly.  
12 -- I started walking toward the Golf Manor  
13 car. And I took maybe two, maybe two or three steps  
14 in that direction. He stopped. So at that point I  
15 was like, to myself, damn, you know. Not only did  
16 he do this messed-up stuff on the ground --  
17 Q. You mean hitting him after he was  
18 handcuffed?  
19 A. Right.  
20 Q. Okay.  
21 A. -- then he turned around and does this.  
22 So in my mind I was like, well, I have no choice but  
23 to notify a supervisor when a supervisor get on the  
24 scene, tell him what I saw, what he did.

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1 Because I wasn't the only one that saw  
2 this, you know. When he was on the ground,  
3 handcuffed, getting punched, it was a crowd forming,  
4 you know. So they -- they saw what I saw. I can  
5 only assume that they saw what I saw, you know, and  
6 I'm not going to sit back and say, you know, I  
7 didn't see anything. I was right there. I saw  
8 everything. I saw the whole thing.  
9 Q. Did any other officers tell you that they  
10 saw Mr. -- Officer Caton punch Mr. Owensby while he  
11 was on the ground and handcuffed?  
12 A. Sellers.  
13 Q. Anyone else?  
14 A. No.  
15 Q. And when -- did any other officers tell  
16 you that they saw Officer Caton punching Mr. Owensby  
17 while he lay in the back seat of the Golf Manor  
18 cruiser?  
19 A. No, I don't remember nobody telling me  
20 that.  
21 Q. Did you see -- as you were taking your two  
22 steps or so toward the Golf Manor car, when Officer  
23 Caton stopped, did you see Officer Caton then close  
24 the door to the car?

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1 A. I don't remember if -- no, I don't  
2 remember seeing him actually close the door. He may  
3 have, but like I say, my mind was elsewhere at that  
4 time.  
5 I mean, I was already thinking about  
6 repercussions, I mean, you might as well say. When  
7 you see something like that and then you already  
8 made up your mind that you're going to tell what you  
9 saw, then there's consequences and repercussions  
10 that follow when you do something like that.  
11 Q. Did you -- what did you do then?  
12 A. After that happened?  
13 Q. After that. After you saw Mis-- Officer  
14 Caton punching Mr. Owensby in the back seat of the  
15 Golf Manor cruiser, what was the next thing that you  
16 did?  
17 A. I think I asked somebody to bring my car  
18 over from where it was parked.  
19 Q. Do you know who you asked?  
20 A. No. I don't remember.  
21 Q. Did you that evening talk to Officer  
22 Caton?  
23 A. No, huh-uh.  
24 Q. Did you --

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1 MR. HARDIN: I'm sorry. I didn't hear the  
2 answer.  
3 THE WITNESS: No, I did not.  
4 Q. Did you talk to Officer Jorg about what  
5 you had seen?  
6 A. No.  
7 Q. Did you talk to any other officers about  
8 what you had seen?  
9 A. No.  
10 Q. Did you talk to any sergeants that night  
11 about what you had seen?  
12 A. No.  
13 Q. Why did you not tell any sergeants what  
14 you had seen that night?  
15 A. Once he -- we found out that it was a  
16 problem with his health in the back of that car,  
17 everything changed.  
18 Q. How so?  
19 A. Because this turned into a critical  
20 incident where, you know, somebody was either in  
21 danger of losing their life or they was going to  
22 lose their life, which it did happen. So at that  
23 point it's like a golden rule that you don't say  
24 anything till you talk to your attorney. And when



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1 they --  
2 **Q. And so that -- and that was your decision**  
3 **at that point?**  
4 A. At that point when I found out that Mr.  
5 Owensby health had deteriorated, yes.  
6 Well, actually, wait a minute. Let me  
7 back up. When -- when that happened and then they  
8 took me off of my crowd control post and told me to  
9 sit in my car and don't talk to anybody, that's when  
10 I knew I was going down to be interviewed.  
11 So once we got down to CIS to be  
12 interviewed that night, or earlier that morning,  
13 into the morning, had they 2.26'ed me, I'd have told  
14 them everything.  
15 **Q. What's that?**  
16 A. That's where -- that's where they give us  
17 a 2.26, the department, where we're ordered to tell  
18 what happened but it's not used against us  
19 criminally.  
20 So I was waiting to be 2.26'ed when I got  
21 in --  
22 MR. WEISENFELDER: I'm sorry, to be what?  
23 THE WITNESS: 2.26'ed.  
24 MR. WEISENFELDER: What do you mean,

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1 2.26'ed?  
2 A. So when I got called in to be interviewed,  
3 they didn't 2.26 me; they read me my rights. So  
4 after talking to FOP-appointed lawyers, I had  
5 told -- I told them everything, the whole story,  
6 the -- in the car, out the car, on the ground,  
7 handcuffed, getting punched. I told them  
8 everything. I was advised by FOP attorneys to  
9 invoke my Fifth Amendment right and remain silent.  
10 **Q. Which you did?**  
11 A. Yes.  
12 **Q. Now, going back to the scene, after**  
13 **Officer -- you saw Officer Caton punching Mr.**  
14 **Owensby in the back seat of the Golf Manor cruiser,**  
15 **did you go over to check on the health of Mr.**  
16 **Owensby?**  
17 MR. HARDIN: Objection to the form of the  
18 question.  
19 A. No.  
20 **Q. How much time elapsed, to your best**  
21 **recollection, between the time that you saw Officer**  
22 **Caton striking Mr. Owensby in the back seat of the**  
23 **cruiser to the time that someone pulled Mr. Owensby**  
24 **out of the Golf Manor cruiser?**

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1 MR. HARDIN: Objection to the form of the  
2 question on putting information in that is not  
3 in evidence.  
4 A. I think it's about five to six minutes.  
5 **Q. And during that time period what were you**  
6 **doing, in that five -- five-minute period?**  
7 A. Of him being taken out of the car?  
8 **Q. During the time period between you saw**  
9 **Officer Caton at -- at the car --**  
10 A. Uh-huh.  
11 **Q. -- and the time that Officer -- the time**  
12 **that Mr. Owensby was -- was taken out of the car.**  
13 A. Okay. That's when it's -- I ended up on  
14 the post, just hold-- keeping the crowd back,  
15 because it was turning into a crime scene.  
16 **Q. Were you present when Mr. Owensby was**  
17 **taken out of the Golf Manor cruiser?**  
18 A. No.  
19 **Q. When did you first know that Mr. Owensby**  
20 **was taken out of the Golf Manor cruiser?**  
21 A. When I looked over and seen -- it was one  
22 of the officers, I think it was Hesse (sic), trying  
23 to administer -- it was either Hesse (sic) or Caton.  
24 It was a white officer. They were trying to

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1 administer CPR.  
2 **Q. Was this on the asphalt parking lot of the**  
3 **Sunoco station next to the Golf Manor car?**  
4 A. Yes.  
5 **Q. Do you know whether or not Mr. Owensby was**  
6 **still handcuffed?**  
7 A. I don't know.  
8 **Q. What happened then? After you saw the**  
9 **officer trying to administer CPR, what happened**  
10 **next?**  
11 A. Fire was -- Fire had been called and they  
12 responded. And then from that point it was like I  
13 was either on the crowd control post until I was  
14 told by a supervisor to get in my car and just stay  
15 there until I was escorted down to CIS.  
16 **Q. Do you know what time you were escorted**  
17 **down to CIS?**  
18 A. About 11:30, something like that, maybe --  
19 might have been closer to midnight. I'm not sure.  
20 **Q. Did you know any of the fire/rescue people**  
21 **that came out to the scene?**  
22 A. No.  
23 **Q. Did you see or hear them say anything,**  
24 **the -- the fire and rescue people, when they arrived**

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1 seconds. There's a Golf Manor car in the middle of  
2 the screen. Is that the car that Mr. Owensby was  
3 placed in?

4 A. I think so.

5 Yes. Yes, it was. I'm sorry. I was just  
6 trying to see where the door was at and everything.

7 Q. Yeah.

8 A. That's the -- that's the car.

9 Q. That's it? Okay.

10 We're at 57 seconds into the video.

11 There's a person walking toward -- toward Officer  
12 Caton. Is that you?

13 A. Yeah. Uh-huh. Yes.

14 Q. Do you know what you said to Officer Caton  
15 there?

16 A. I probably -- since he was going to get  
17 his car, I probably asked him to either bring my car  
18 over, too, or have somebody bring it over.

19 Q. Do you recall whether or not you asked him  
20 to get your hat?

21 A. Maybe. I mean, that's like -- when, you  
22 know, everything is starting to become under  
23 control, that's like a big thing for the police and  
24 the chief: to wear your hat. So I probably -- I

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1 might have asked for my hat.

2 Q. I'm just curious. How -- how do you know  
3 that's a big thing?

4 A. Because we get reprimanded for not wearing  
5 our hats.

6 Q. For not wearing your hat?

7 A. Yes.

8 Q. Okay.

9 We're at a minute 23 seconds into the  
10 video. You were just describing the fact that Mr.  
11 Owensby ran from you in the past and that you had  
12 him by the hood of the sweat shirt.

13 A. Uh-huh.

14 Q. You heard that?

15 A. Yes.

16 Q. You're talking to two police officers. Do  
17 you know who they are?

18 A. Speed it up a little bit and I'll show  
19 you.

20 Q. All right.

21 A. That's Officer Sellers, and I think that's  
22 Spellen with his back to me right now.

23 Q. All right.

24 A. I think. I'm not sure.

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1 THE REPORTER: I'm sorry. You think  
2 that's who?

3 THE WITNESS: Officer Spellen.

4 Q. There's a --

5 A. I know that's Darren Sellers for sure.

6 Q. With the glasses?

7 A. The glasses.

8 Q. All right. And there's another officer,  
9 beginning at twenty -- a minute 25 seconds in, who's  
10 beginning to cross the screen from your right to  
11 your left. Do you know who that is?

12 A. Yeah. That's Sergeant Watts.

13 Q. All right.

14 There's an officer that you were just  
15 shaking hands with who has a hat on. We're at a  
16 minute 38 into the video. Who is that?

17 A. That's Officer Brazile.

18 Q. We're at a minute 53 into the video.

19 There's a female officer crossing the screen.  
20 That's Officer Browner?

21 A. Sergeant Browner.

22 Q. Or Sergeant Browner.

23 We're at two minutes 11 seconds into the  
24 video. There's a person in plainclothes in the

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1 middle of the screen. Do you know who that is?

2 A. Abe Lawson.

3 Q. Okay.

4 A. Officer Lawson.

5 Q. At two minutes 26 -- 26 seconds into the  
6 video there is a white person in -- in plainclothes  
7 crossing the screen. Is that Officer Hodge?

8 A. Yes.

9 Q. You can hear Officer Jorg talking to  
10 someone?

11 A. Uh-huh. Yes.

12 Q. In the video. Were you present when Jorg  
13 was talking?

14 A. Yes.

15 Q. Who was he talking to?

16 A. Talking to Sergeant Browner and Sergeant  
17 Watts.

18 Q. Browner and Sergeant Watts?

19 A. Yes.

20 Q. Thanks.

21 We're at 4 minutes 4 seconds. While all  
22 of this is going on, Mr. Owensby is in the Golf  
23 Manor cruiser off to the left side of the screen; is  
24 that right?

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1 the third page in from the end is relevant in  
2 explaining what a 2.26 is, as referenced by  
3 Officer Hunter.  
4 Q. I want to show you, sir, what's previously  
5 marked as Exhibit 60. This is the Cincinnati Police  
6 Department use of force policy that was in effect in  
7 November of 2000, correct?  
8 A. Yes.  
9 Q. And I want to direct your attention to  
10 page 3, please. You see in bold there is a word  
11 "Procedure" about a third of the way down the page?  
12 A. Yes.  
13 Q. Okay. Paragraph right above that says,  
14 "Following any use of force resulting in a citizen's  
15 injury, officers will ensure appropriate first aid  
16 is rendered immediately once the incident scene is  
17 stabilized."  
18 Now, we covered in -- in the first part of  
19 your deposition on November 6 that, in your opinion,  
20 the scene was stabilized once Officer -- once Mr.  
21 Owensby was handcuffed and placed in the back seat  
22 of the cruiser; is that right?  
23 A. Yes.  
24 Q. Okay. Am I correct in understanding that

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1 no Cincinnati police officers immediately provided  
2 appropriate first aid for Mr. Owensby while he lay  
3 in the back seat of that cruiser; is that right?  
4 A. Yes.  
5 Q. It wasn't until Sergeant Watts, five  
6 minutes or -- or later, ordered him removed from the  
7 cruiser that anyone began to consider first aid for  
8 Mr. Owensby, right?  
9 A. Yes.  
10 Q. Go to page 9 of that document, Exhibit 60.  
11 At paragraph C on that page it says Use of Chemical  
12 Irritant. And at number 4 under letter C it says,  
13 "When spraying chemical irritant, if possible spray  
14 five to ten feet" from the -- "from an individual.  
15 The target should be" the "individual's eyes, nose,  
16 and mouth."  
17 This was the -- remember I asked you  
18 earlier today the standard for the distance that an  
19 officer should apply chemical irritant. This was  
20 the standard that was in place on November 7, 2000;  
21 is that right?  
22 A. Yes.  
23 Q. And you did not spray the irritant from  
24 five to ten feet but, rather, from approximately

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1 six inches?  
2 A. Yes.  
3 Q. Is there a reason for that?  
4 A. Yes.  
5 Q. What was the reason?  
6 A. The reason was we was trying to get him to  
7 comply, and for me to spray him and not hit Officer  
8 Jorg with overspray, I had to be as close as I could  
9 to him. That was my reason. I ain't saying it's --  
10 it's not -- it's obvious that it wasn't procedurally  
11 correct, but that was my reason.  
12 Q. Number 5 says Exposed individuals sprayed  
13 with chemical irritant" -- or "Expose individuals  
14 sprayed with chemical irritant to fresh air. Give  
15 them an opportunity to rinse their face with plenty  
16 of clear, cool water." That was never provided to  
17 Mr. Owensby, was it?  
18 A. No. And water was never provided to us.  
19 Q. Well, nobody else was Mace'd, were they?  
20 A. No. Not us meaning us as far as if we got  
21 Mace'd on a scene. I mean, we didn't carry water  
22 around in our cruisers.  
23 Q. Okay. But you were at a convenience  
24 store?

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1 A. Right.  
2 Q. There was water there, right?  
3 A. Yes, uh-huh.  
4 Q. There was -- there was bottled water in  
5 the refrigerators at the convenience store?  
6 A. Yes, uh-huh.  
7 Q. And no one ever went to try to offer Mr.  
8 Owensby any clear, cool water?  
9 A. No.  
10 Q. Had that been done once he was handcuffed,  
11 do you believe that officers would have immediately  
12 been able to determine that he was unconscious?  
13 A. Yes.  
14 Q. And if officers had immediately determined  
15 that he was unconscious, then the officers would  
16 have also then had an obligation to administer first  
17 aid?  
18 A. Yes.  
19 Q. Officer Hasse, who was present once Mr.  
20 Owensby was placed in the back seat of the cruiser,  
21 Officer Hasse was a trained EMT, was he not?  
22 A. I don't --  
23 Q. You don't know?  
24 A. I don't know.

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